IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1721 of 1999

in

SPECIAL CIVIL APPLICATIONNo 11218 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

C G SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR MUKUL SINHA with Mr.S.Iyer for Appellant
Mr.S.N.Shelat, learned Advocate General
with Ms. Harsha Devani,learned AGP for
for Respondent No. 1 - State of Gujarat
MR PARESH UPADHYAY for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE RAVI R.TRIPATHI

Date of decision:05/09/2001

CAV JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This Letters Patent Appeal is directed against the judgment and order dated 16.8.99 passed by the learned single Judge dismissing Special Civil Application No.11218/94. In fact the learned single Judge by his common order dated 16.8.99 has decided two Special Civil Applications; Special Civil Application No.11218/94 filed by the present appellant (Shri C.G.Sharma) and Special Civil Application No.12454/94 filed by Mr.K.H. Bhatt. The present Appeal is by Shri C.G.Sharma, who was petitioner in Special Civil Application No.11218/94.

2. The appellant herein i.e. original petitioner had joined the services in the High Court of Gujarat in August 1977 as Junior Clerk. He was promoted as Assistant in the year 1986. The appellant claims that he had a clean service record and there was no adverse remarks in his annual confidential reports while he was on the establishment of the High Court staff. The appellant did his graduation in law after graduating in Commerce. The advertisement was issued by G.P.S.C. for recruitment to the post of Civil Judge (J.D.) and J.M.F.C. and other posts in the Judicial Services, he applied in response to this advertisement for the post of Civil Judge (J.D.) and J.M.F.C., appeared in the written test held by G.P.S.C. and, thereafter, also appeared in the oral test. He was selected by G.P.S.C. for the said post and accordingly he was given appointment as Civil Judge (J.D.) and J.M.F.C. He took over the charge of the post on 29.6.91 as Civil Judge (J.D.) and J.M.F.C. at Mehsana, which was his first posting. According to the appellant from 29.6.91 onwards he worked at different places as under:-

-- 29.6.91 for a period of one and half months at Mehsana.

-- He was then posted at Kheralu in Mehsana District where he took over on 26.8.91 and worked at Kheralu upto 13.9.92.

-- He was then transferred from Kheralu to Vadnagar because there was a link court at Vadnagar and Kheralu but a decision was taken to separate Vadnagar Court and, therefore, with effect from

14.9.92 he was transferred to Vadnagar Court and from 14.9.92 to 31.5.94 he worked at Vadnagar.

-- Thereafter he was posted as Civil Judge (J.D.) and J.M.F.C. at Dabhoi, District Baroda.

The petitioner claims that through out the period of his working, as above, except for the remarks of little less disposal on civil side, his performance was adequate, rather good and his performance had never gone below adequate. However, he was told that he should have more disposal on civil side. Disposal on criminal side was quite large and so far as civil cases are concerned, it was less because there was separation of the Court, the advocates on civil side were few, the pending matters were also few and owing to lack of rotation, the civil matters in more numbers could not be disposed of, despite the appellant's endeavour for reaching the maximum level. The appellant has given the summary of the intimation about his work as given to him by the High Court for the period upto December 1991 to December 1993 as under:-

Date of Intimation	Period (Quarter)	Remarks
12.11.92	Upto December 1991	Assessment - Adequate
12.7.1993	March, 1992	Very good
12.7.1993	June, September 1992	Unable to dispose of the adequate number of civil cases.
14.10.1993	Upto June, 1993	Adequate
14.10.1993	March-June,1993	Unable to dispose of the adequate civil cases
1.4.1994	September, 1993	Adequate
	December, 1993	Adequate

He has also given the summary of the remarks of the concerned District Judge as under:-

Date of intimation	Period (Quarter)	Remarks
10.12.1991	September, 1991	Not Assessed
17.3.1992	December,1991	Civil - Poor

Criminal - Very Good
(General Assessment-
Adequate)

19.5.1992 March, 1992 Civil- Poor
Criminal - Very Good
(General Assessment
of Judicial work-
Very Good)

1.9.1992 June, 1992 Adequate

24.11.1992 September, 1992 Adequate

22.2.1993 December,1992 Adequate

27.5.1993 March, 1993 Adequate

2.9.1993 June, 1993 Inadequate (As per
the Hon'ble High Court
Assessment - Adequate)

10.11.1993 September,1993 Adequate

17.2.1994 December,1993 Adequate

9.5.1994 March, 1994 Very Good

Despite the appellant's good disposal on criminal side, because of the less disposal in civil side, his disposal could not be treated as very good or good,but it was graded as adequate and on that basis he was intimated the remarks about the less disposal in civil cases, that his disposal in civil cases was grossly poor and inadequate and the remark which remained against him was "poor disposal on the civil side" and the last intimation in this regard was dated 26.11.93. He was further intimated on 21.1.94 with the remark "poor in civil" and the same was reiterated for the period 1.4.94 to 17.5.94 on 12.9.94. Letters dated 6.10.92, 5.2.93 and 13.9.93 were sent to the appellant calling upon him for improvement in future and the appellant submitted a representation dated 28.10.93 pointing out the facts and explaining the various difficulties and hardships which he was required to face during this period for the purpose of disposal of the civil cases. An adverse remark was then intimated to him about his less disposal in civil cases on 2.5.94, against which the appellant submitted representation on 26.6.94 alongwith the statement of number of cases disposed of by him and the number of judgments delivered by him in civil cases. He had also stated in the

petition that at the time when he took over the charge at Vadnagar, more than 300 cases pending at Kheralu were transferred to Vadnagar and upto 17.5.94 while he was at Vadnagar he has disposed of majority of the cases and when he left the charge at Vadnagar there were hardly 24 cases of civil nature, which were pending. In para 12 of the Special Civil Application he had given his detailed reasons and grounds with regard to the disposal in civil cases.

3. On 22.9.94 his services were terminated by Notification dated 22.9.94 stating that the services of the appellant, who was appointed on 7.6.91, are hereby terminated.

4. The appellant's case is that initially he was appointed on probation for a period of two years, there was no provision for extension of this probation period and in fact the said period of probation was not extended on expiry of two years and although this period of two years expired on 17.6.93 he was continued in service beyond June 1993. Thereafter, the order was passed on 22.9.94 and in absence of any extension of the period of probation, he should be deemed to have been confirmed on the post of Civil Judge (J.D.) and J.M.F.C. The appellant's grievance against the termination, as aforesaid, was that the termination order did not indicate any reason, that with the expiry of the two years period of probation, in absence of any provision for extension of the period of probation and in absence of any order of extension of the period of probation, with his continuance even after the period of expiry of two years, he should be deemed to have been confirmed on 17.6.93, that the termination order suffers from the vice of pick and choose and arbitrariness for the reason that inasmuch as in many cases, the officers, who failed to achieve the target of disposal of civil cases as per the norms laid down by the High Court, have been confirmed, but appellant's services were terminated and thus he was subjected to arbitrariness and discrimination. No inquiry was held prior to his termination, as aforesaid, and the principles of natural justice had been violated and the appellant was made to leave the charge of the post by letter dated 23.9.94. On the aforesaid grounds, the Notification dated 22.9.94 read with the communication dated 23.9.94 sent by the Joint Registrar to the appellant were challenged by him by the petition dated 26.9.94 filed in this court on 26.9.94 and, thereafter, Rule was issued on 23.2.95. An affidavit in reply dated Nil 1996 was filed on behalf of the respondent No.2 High Court and the petition itself was

dismissed on 16.8.99 and the rule was discharged.

5. We find from the record that during the pendency of the Special Civil Application, a Civil Application No.3129/97 dated 17.3.97 had been filed by the appellant i.e. the original petitioner in Special Civil Application seeking a direction that the respondent No.2 be directed to produce the data of disposal of civil and criminal matters of the Civil Judges mentioned in this Civil Application at Sr.Nos.1 to 11. In this Civil Application a grievance was raised that the services of the petitioner had been terminated merely on the ground of poor disposal in civil maters, but the disposal of the petitioner was through-out adequate and very good and the petitioner believed that his disposal was better than the 11 colleagues, whose names are mentioned in the Civil Application who were confirmed. Inspite of their poor disposal, as compared to the petitioner, they were confirmed on the post of Civil Judge (J.D.) while the petitioner was not confirmed. It is also clear from the impugned order passed by the learned single Judge that a specific grievance had been raised to this effect. This contention as urged before the Court on behalf of the petitioner has been noticed by the learned single Judge himself in para 2 of the impugned order in the following words:-

"It was also contended that the petitioner had tried to the best of his capacity to dispose of the cases and that many others who had no disposal as per the norms were confirmed in the post but because of the pick and choose approach the petitioner's services came to be terminated."

However, we find that this aspect of the matter has not been dealt with by the learned single Judge and this grievance is not found to have been adjudicated by the learned single Judge in the impugned order and yet the Civil Application No.3129/97 was disposed of on 16.8.99 (i.e. the date of the impugned order by which the Special Civil Application was dismissed) by an order to the following effect:-

"Since the main petition is dismissed, this C.A. does not survive and the same stands disposed of accordingly."

6. Aggrieved from the judgment and order dated 16.8.99, whereby the petition was dismissed, the present Letters Patent Appeal was filed on 10.12.99. Appeal was admitted on 19.7.2000 by the Court (Coram:

D.M.Dharmadhikari, C.J. and J.M.Panchal, J.) and on the same date it was fixed for final hearing in the last week of August, 2000.

7. We find from the record that in this Letters Patent Appeal, an affidavit dated 10.7.2000 was filed by the appellant making reference to the Civil Application No.3129/97, which had been filed by him in the Special Civil Application and in Para 3 of this affidavit dated 10.7.2000 filed in the Letters Patent Appeal, it was specifically pointed out that 11 Civil Judges, who were appointed alongwith the appellant, but had far poor record of disposal of cases, were confirmed, the appellant had, therefore, prayed for the record of such Judges to be placed before the Court and despite the order passed on 19.3.97 by the single Bench, the records were not produced and reply was filed on 15.4.97 contending that the request of the appellant for the production of the service record of other Judges was irrelevant and while disposing of the main petition, unfortunately this aspect was not considered. In para 5 of this affidavit, it was further stated that on 3.1.89 High Court had issued guidelines regarding disposal of old cases and that the plain reading of these guidelines would show that such guidelines were applicable to permanent Judges and not probationers. In para 6 reference was made to Government Resolution dated 30.3.89 by which the rule was framed regarding the extension or otherwise of the probation period. The order sheet dated 5.10.2000 recorded in this Letters Patent Appeal shows that Mr. Paresh Upadhyay, learned counsel for the respondent No.2 i.e. High Court had submitted that he is filing a chart with regard to these officers and this is how we have before us the chart of 13 officers on record including the name of the present appellant - original petitioner in Special Civil Application No.11218/94 (Mr.C.G.Sharma at Sr.No.13). This is a chart in the form of the letter addressed by the Section Officer, Administration (D) Branch dated 28.9.2000 addressed to the Section Officer, Law officer's Branch, High Court of Gujarat. Yet another chart in the form of a letter dated 30.9.2000 addressed by the Section Officer, Administration (D) Branch addressed to the Section Officer, Law officer's Branch, High Court of Gujarat had been filed. The first chart dated 28.9.2000 is a statement showing the adequacy or otherwise disposal of Judicial Officers in reply to the Law Officer Branch's endorsement dated 25.9.2000 and 28.9.2000 for the year 1991 to 1993 for the officers at No.1 to 11, for officer at No.12 for 1992 to 1994 and the appellant i.e. officer at No.13 for 1991 to 1994 and the other chart is a

statement showing the adequacy or otherwise disposal of the 19 Judicial Officers in reply to the Law Officer Branch's endorsement dated 29.9.2000 for the years 1991 to 1992 in case of officer at No.1, for the years 1991 to 1993 in case of officers at No.2 to 13, 15 to 17 and 19 for the years 1991 to 1994 in case of the present appellant, the officer at No.14 and the officer at No.18. In the second chart dated 30.9.2000 the name of Mr.C.G.Sharma i.e. present appellant is included at Sr.No.14 amongst 19 officers mentioned in this Chart. These charts show the adequacy or otherwise disposal of the Judicial Officers for the years mentioned as above for quarter ending in March, June, September and December for respective years. These charts also show that all the Judicial Officers, whose names are included in these two charts, are appointees of the year 1991 except one Shri S.N.Vakil, whose date of appointment has been shown to be 30.9.1992 at Sr.No.12 in the first chart dated 28.9.2000. So far as the present appellant is concerned, whose date of appointment has been shown to be 27.9.1991, he has been assessed for the years 1991 to 1994, as mentioned in the chart dated 30.9.2000 is as under:-

1991
Quarter ending September Not assessed
(Obviously because he was appointed on 27.9.92 only)
Quarter ending December Adequate

1992
Quarter ending March Very good
Quarter ending June Adequate
Quarter ending September Adequate
Quarter ending December Adequate

1993
Quarter ending March Adequate
Quarter ending June Adequate
Quarter ending September Adequate
Quarter ending December Adequate

1994
Quarter ending March Very good
Quarter ending June Adequate
Quarter ending September Not assessed
(May be because his services were terminated by Notification dated 22.9.94).

The Xerox copies of these two charts are appended with this Judgment as Schedule "A" and Schedule "B" and the

same may be treated as part and parcel of this Judgment.

8. Before us the impugned judgment and order passed by the learned single Judge dated 16.8.99 has been assailed mainly on three grounds.

(i) The first ground is that with the expiry of the period of two years of probation in 1993 when the appellant was yet allowed to continue he stood automatically confirmed, and whereas he stood automatically confirmed there was no question of termination of service without holding any inquiry.

(ii) That the judgment of the learned single Judge suffers from the vice of the non adjudication of the plea which had been specifically raised and urged before the learned single Judge, that the appellant had been subjected to pick and choose inasmuch as the other officers, who had no disposal as per the norms, were confirmed whereas the appellant had been terminated and this point was neither dealt with nor considered by the learned single Judge, though the contention, as was urged on behalf of the appellant, had been quoted by the learned single Judge in para 2 of the impugned judgment and the Civil Application, which had been filed for production of the record of such officers, was rejected on the date of the dismissal of the Special Civil Application by saying that since the main petition has been dismissed, the Civil Application stands disposed of.

(iii) That except the case of less disposal in civil cases, which was also the basis for the communication of remarks, there was nothing against the appellant so as to warrant his termination and the assessment of the work of the appellant, as mentioned in the two charts produced by respondent No.2 and sifting of the assessment of disposal of cases qua the assessment of disposal of cases for the other officers, who are included in these charts would show that it is a clear cut case of pick and choose inasmuch as the other officers, including the officers, whose assessment was found to be poor continuously either for all the three years or for two years or for one year had also been confirmed whereas the appellant, whose work was assessed to be adequate for all the three years,

including very good for the quarter ending March, 1992 and the quarter ending March, 1994 and even for the quarter ending June 1994 (the latest and last assessed quarter) to be adequate was subjected to termination. It has been contended that the appellant's disposal was found to be adequate continuously for all the quarters for all the years and very good for two quarters and his disposal was never assessed to be poor according to the norms of the High Court at any point of time and, therefore, the power of termination has been exercised against the appellant in a wholly arbitrary manner.

9. We have considered the averments made on behalf of both the sides. So far as the first point is concerned, we find that the point has been fully dealt with by the learned single Judge in the context of sub-rule (4) of Rule 5 of the Gujarat Judicial Service Recruitment Rules, 1961, which is reproduced as under:-

"(4) Unless otherwise expressly provided every person appointed under the preceding sub-rules shall be on probation for a period of two years and on the expiry of such period, he may be confirmed if:-

(a) there is a vacancy; and
(b) his work is found to be satisfactory."

Large number of authorities, including the following cases, were cited:-

(1) Dayaram v. State of M.P., reported in AIR 1997 SC 3269.

(2) Anoop v. Govt. of India, reported in AIR 1984 SC 636

10. As against it, the learned Advocate General Mr.S.N.Shelat placed strong reliance on the decision of the Apex court in the case of State of Maharashtra v. Saboji, reported in AIR 1980 SC 42. The rule under consideration in this case before the Supreme Court was to the following effect:-

"Unless otherwise expressly directed, every person appointed in the last foregoing sub-rule shall be on probation for a period of two years and on the expiry of such period he may be confirmed if:-

(a) there is a vacancy

(b) his work is found to be satisfactory"

11. Besides above cases, large number of authorities have been cited before us on behalf of both the sides. However, we find that it is not necessary for us to go into the details of all those cases for the simple reason that sub rule (4) of Rule 5 of the Gujarat Judicial Service Recruitment Rules, 1961 is in para materia with the rule, which was under consideration in the case of State of Maharashtra v. Saboji (Supra) and we find that even if the two years period expires and the probationer is allowed to continue after a period of 2 years, automatic confirmation cannot be claimed as a matter of right because in terms of the rule, the work has to be satisfactory, which is a pre requisite or pre condition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years, as mentioned in the rule, there is no question of deemed confirmation. Language of the rule itself excludes any chance of giving deemed or automatic confirmation because the confirmation is to be ordered if there is a vacancy and if the work is found to be satisfactory. Therefore, even if there is a vacancy, unless and until the work is found to be satisfactory, there is no question of confirmation and, therefore, deemed confirmation, in the light of the language of this rule, is ruled out and it has also been held to be so in the case of State of Maharashtra v. Saboji (Supra) and the language of these two rules is in para materia. The learned single Judge has rightly come to the conclusion that two rules are identically worded and in the case of State of Maharashtra v. Saboji (Supra) the Apex court had held that plain meaning of the rule is that there is no automatic confirmation on the expiry of probation period of two years and that on the expiry of the said period of two years, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory. The Rule also does not say that the two years period of probation, as mentioned in the rule, is the maximum period of probation and the probation cannot be extended beyond the period of two years. In our opinion, therefore, the learned single Judge has rightly held that there is no question of automatic or deemed confirmation.

12. However, the matter does not end here. Even if the power is there to terminate at the end of the probation period or during the extended period of probation at any time, such power cannot be exercised in an arbitrary manner. Arbitrariness strikes at the very root of the principle of reasonableness, prudence and

rationality. We find that this aspect of the matter, though urged specifically before the learned single Judge and although mentioned as one of the points urged on behalf of the petitioner in para 2 of the impugned Judgment itself, has not been dealt with by the learned single Judge and to that extent, the Judgment certainly suffers from the vice of non adjudication which is more obvious because even the Civil application moved for the purpose had been rejected by saying that it stands rejected because the main petition had been rejected. Thus there has been no adjudication of this grievance by the learned single Judge and the impugned judgment and order, in our opinion, suffers from the vice of non adjudication.

13. Coming to the third point seeking the actual adjudication by us and which was not adjudicated by the learned single Judge, though urged before him, we find from the two charts, which we have enclosed with the Judgment as Schedule "A" and Schedule "B",that it is a clear and transparent case of arbitrary exercise of the power and the appellant's contention is right that he had been subjected to pick and choose and respondents have failed to place any material on record whatsoever in support of the case as to why and on what basis the work of the appellant could not be said to be satisfactory, when the cases in which the work was assessed to be poor repeatedly were also confirmed and petitioner as well as others were all appointees of the year 1991. Appellant in his Civil Application has mentioned 11 names, who were the Officers similarly situated being appointees of 1991. The names of these 11 officers all appointees of 1991 are mentioned as under:-

1. Mr.V.D. Parmar
2. Mr.S.H.Thakkar - appointed (at Sr.No.17) by same order dated 7.6.91 - by which the appellant was appointed.

3. Mr.B.B.Pathak
4. Mr.A.N.Desai
5. Mr.K.J.Dashandi
6. Mr.K.T.Makhija
7. Mr.V.D.Chaudhary appointed (at Sr.No.3) by same order dated 7.6.91 - by which the appellant was appointed.
8. Mr.U.K.Trivedi
9. Miss Y.M.Pandya
10. Mr.J.B. Patel
11. Mr.V.M.Chavda

In the chart which is enclosed as Schedule "A" the names of these 11 officers are at Sr.Nos.1 to 11 and perusal of Schedule "A" shows that in case of V.D.Parmar at Sr.No.1, disposal was through-out poor except for the quarter ending March 1993, when it was inadequate. In case of S.H.Thakkar at Sr.No.2, for 4 quarters, it was poor and for 2 quarters it was inadequate and for one quarter it was good and for another quarter it was very good and for one quarter it was just adequate. In case of B.B.Pathak for the years 1991 to 1993 it was poor for 3 quarters and inadequate for 2 quarters and adequate for 3 quarters. In case of A.M.Desai at Sr.No.4 it was poor for 2 quarters, inadequate for 3 quarters and just adequate for one quarter. In case of K.J.Dashondi at Sr.No.5 it was inadequate for one quarter but adequate for rest of the quarters. In case of K.T. Makhija at Sr.No.6 it was inadequate for 4 quarters and just adequate for 3 quarters and adequate for rest of the quarters. In case of V.D.Chaudhary at Sr.No.7 it was poor for 2 quarters, inadequate for one of the quarters, just adequate for one quarter and adequate for rest of the quarters. In case of U.K.Trivedi at Sr.No.8 it was inadequate for 2 quarters, just adequate for 2 quarters and adequate for rest of the quarters. In case of Ms. Y.M.Pandya at Sr.No.9 it was poor for 5 quarters, inadequate for 3 quarters and adequate only for one quarter. In case of J.B.Patel at Sr.No.10 it was poor for 4 quarters, inadequate for 2 quarters and for no quarter it was adequate. In case of V.M.Chavda at Sr.No.11 it was poor for 2 quarters, inadequate for 2 quarters and adequate for rest of the quarters.

It was pointed out that in the chart Schedule 'A' details have been furnished in respect of the officers as asked by the petitioner.

It was pointed out that the other chart (Schedule 'B') contains details about the adequacy or otherwise disposal of 19 Officers and it has been produced by respondent No.2 on its own. Even the perusal of this chart (Schedule 'B') would show that there are officers at Sr.No.2 (V.D.Chaudhry) having poor for 2 quarters, at Sr.No.3 (P.P.Shah) having poor for 4 quarters, at Sr.No.4 (K.S.Patel) having poor for 1 quarter, at Sr.No.5 (P.C.Thakar) having poor for 2 quarters, at Sr.No.6 (B.G.Dave) having poor for 1 quarter, at Sr.No.7 (M.U.Memon) having poor for 2 quarters, at Sr.No.8 (P.M.Champaneri) having poor for 4 quarters, at Sr.No.9 (D.B.Patel) having poor for 2 quarters, at Sr.No.10 (V.C.Barot) having poor for 3 quarters, at Sr.No.12 (P.M.Patel) having poor for 1 quarter, at Sr.No.17

(S.H.Thakker) having poor for 4 quarters, and at Sr.No.19 (A.P.Gohil) having poor for 1 quarter. Besides this, many of these Officers are having inadequate for one or more than one quarter and in some cases the disposal is just adequate for one or more than one quarter.

Whereas the appellant, whose name is at Sr.No.14 has very good for 2 quarters and adequate for 9 quarters and for 2 quarters ending September in 1991 and 1994 it has not been assessed.

As against this so far as the appellant is concerned, his work was never assessed to be inadequate or poor in any quarter, was assessed to be very good for 2 quarters and adequate for 9 quarters out of 11 quarters in all for which he was assessed.

One fails to understand that how in face of this factual position when the appellant had to his credit the assessment of adequate disposal for 9 quarters and very good for 2 quarters and not poor or inadequate for any of the 11 quarters for which his work was assessed, could be subjected to termination. When the cases in which work was assessed to be poor or inadequate for more than one quarters could be confirmed, how the petitioner could be subjected to termination. It appears that there has been no objective consideration of data on record about the disposal on a uniform basis and the decision to terminate the services of the appellant had been taken on application of uneven standard with regard to the disposal of work. In the facts of the present case we find that the intimations which were given to the appellant were only with regard to the poor disposal of civil cases and otherwise there was nothing against the appellant in the communications, which had been sent to him to which we have made a brief reference in the earlier part of this order and wherever the poor assessment had been mentioned, it has been mentioned only with regard to the civil work but on over all basis his disposal has never been assessed to be poor or inadequate for any quarter. Therefore, the so-called adverse remarks, which had been communicated or whatever communications had been sent to him were all in relation to less disposal in civil cases. There is no material other than the data regarding disposal and in the affidavit in reply, which had been filed by the High Court itself, it has been stated in para 6 that keeping all these guidelines in mind the High Court has assessed the poor work of the appellant as follows:-

Year	March	June	September	December
1991	-	-	Not assessed	Adequate
1992	Very good	Adequate	Adequate	Adequate
1993	Adequate	Adequate	Adequate	Adequate
1994	Very good	Adequate	Just Adequate	

We find that the mention of the word 'poor' in the reply in para 6 is contrary to the actual record relied by the respondent no.2 itself and quoted under para 6 itself.

Merely because the other persons, who had given poor disposal repeatedly in number of quarters were direct recruits and the appellant though a similar direct recruit was earlier working as a member of the staff of the High Court and that he has been taken back as Assistant on the parent establishment of the High Court with effect from 27.9.94 is only a poor apology and no justification whatsoever for the order of termination as had been passed against him.

We, therefore, find as a question of fact that while exercising the powers with regard to termination and not according confirmation, the appellant has been subjected to discrimination in gross violation of Articles 14 and 16 of the Constitution of India. Had the uniformity been followed and the norms for disposal been applied in an even manner and there been an objective appraisal of data on record on a uniform yardstick, the appellant-petitioner could not be terminated. There is nothing in the pleadings against the integrity of the appellant. There is nothing in the pleadings against the appellant-petitioner even otherwise except for the suggestion that his disposal was poor in civil cases which we find to be erroneous and contrary to the record and non existent and the result of disparity in consideration. We have sifted the assessment of the appellant's disposal as against the disposal of other Officers, who have been confirmed and who were identically situated to the appellant. We find that it is a fool proof case in which the appellant has been wronged and wrongly picked up for termination. When the probationers are taken for confirmation or termination, different yardsticks cannot be applied. Norms on which the question is taken up and applied should be uniform and if any departure is made, the adequate reasons are

required to be recorded. In the instant case, the respondents have virtually failed to explain before this court in face of the contents of Schedule "A" and Schedule "B" produced by them as to for what reasons and why the appellant who was having very good and adequate disposal was chosen for termination while others even with poor disposal had been confirmed. The appellant was an employee of the High Court of Gujarat since 1977 as a Clerk and was promoted in the year 1986. There was no adverse remarks in his annual confidential reports while he was in the establishment of the High court staff and thereafter with his own efforts and endeavour was able to compete against other candidates from the open market and practising lawyers and was selected in the recruitment on the basis of the examination held by GPSC and during the course of his service as a judicial officer as a probationer, he had given adequate disposal for 9 quarters and very good for 2 quarters, out of 11, for which his work was assessed during the period of his service from 1991 till his services were terminated in 1994. We are simply amazed and shocked as to how the decision could be arrived at against him and for what reason he could be terminated. We are therefore satisfied that the termination order of the appellant was the result of an arbitrary and discriminatory treatment given to the appellant by applying uneven standards and, therefore, the impugned order of termination as was passed against the appellant cannot be sustained in the eye of law and the same deserves to be quashed and set aside and the same is hereby quashed and set aside. The respondents are directed to reinstate the appellant in the Gujarat Judicial Services and relegate him to the position which he was holding prior to the day of his termination and re-consider the question of his confirmation in the light of this judgment. The appellant shall be entitled to all consequential benefits as if the termination order had been never been passed subject to the adjustment of the emoluments drawn by him as an employee of the High Court Staff.

The impugned order passed by the learned Single Judge is set aside and this Letters Patent Appeal is allowed. The Special Civil Application therefore stands allowed. No order as to costs.

(M.R.Calla,J)

(R.R.Tripathi,J)